

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-495

April 21, 1999

EZ Talk Communications
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a Local
Exchange Carrier

**ORDER GRANTING AUTHORITY
TO PROVIDE LOCAL EXCHANGE
SERVICE AS A RESELLER
AND APPROVING SCHEDULE
OF RATES AND TERMS AND
CONDITIONS**

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants EZ Talk Communications (EZ Talk) the authority to provide competitive local exchange service as a reseller in the State of Maine, and approves the Company's Terms and Conditions and Rate Schedules. We also exempt EZ Talk from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On June 30, 1998, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, EZ Talk filed a petition with the Commission requesting authority to provide local exchange service in Maine. 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements

necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting EZ Talk the authority to provide local exchange as a reseller in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

EZ Talk's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and facilities-based interexchange services in Maine.

II. SERVICE TERRITORY

EZ Talk has requested authority to provide local exchange service throughout the state. It states that it will offer service only as a reseller of local exchange service provided by other LECs in that area. We define local resale as the offering of local exchange service purchased from another CLEC pursuant to 47 U.S.C. § 251(b)(1) or from an ILEC at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an incumbent local exchange carrier and their use in providing local exchange service is facilities-based service and not resale. EZ Talk's authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission.

EZ Talk's proposed Rates, Terms and Conditions, which we approve today, also limit its local exchange service offerings to resold services. If EZ Talk wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. EZ Talk shall simultaneously file amended Rates, Terms and Conditions pursuant to 35-A M.R.S.A. § 307 that state its service territory for facilities-based local exchange service. That service territory shall be limited to those areas in which will be ready to provide facilities-based switched local exchange service within a reasonable period of time. The application shall include information establishing that readiness. It is not necessary for a competitive local exchange carrier (CLEC) with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by EZ Talk to go into effect. EZ Talk did not use the Commission's expedited process for approval, which includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have not reviewed the Company's Terms and Conditions and Rate Schedules. If there is any conflict between a provision in EZ Talk 's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions are pages stating that in the event of such a conflict, the statute or the Commission's Rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of EZ Talk 's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by EZ Talk to go into effect.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for EZ Talk's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a competitive local exchange carrier (CLEC) makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent telephone companies are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254"

If EZ Talk executes an interconnect agreement(s) with ILECs(s) it shall obtain approval of that agreement by this Commission.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, EZ Talk must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. EZ Talk shall also comply with

any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, EZ Talk is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests, related to EZ Talk's interexchange carrier activities. Although EZ Talk has not requested a waiver from the requirements of Chapter 210, or from 35-A M.R.S.A. §§ 707 and 708, the Commission has the authority to grant such waivers on its own motion. Because EZ Talk's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.¹ If EZ Talk resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), EZ Talk

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) is subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

In addition, EZ Talk shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

VII. OTHER REQUIREMENTS

EZ Talk shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

VIII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of EZ Talk Communications to provide competitive local exchange telephone service as a reseller in the State of Maine;
2. Exempt EZ Talk Communications from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;
3. Exempt EZ Talk Communications from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that EZ Talk Communications shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of EZ Talk Communications or of any entity that owns more than 50% of EZ Talk Communications. EZ Talk Communications shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. EZ Talk Communications shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, EZ Talk Communications shall amend its rate schedules and terms and conditions to reflect any change in identity;
4. Order that EZ Talk Communications 's proposed terms and conditions and rate schedules (Original pages 1-31, filed on March 10, 1999), attached to this Order, shall be effective on the date of this Order;
5. Exempt EZ Talk Communications from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but EZ Talk Communications shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of EZ Talk Communications or of any entity that owns more than 50% of EZ Talk Communications. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), EZ Talk Communications shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. EZ Talk Communications shall provide the Administrative

Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, EZ Talk Communications shall amend its rate schedules and terms and conditions to reflect any change in identity; and

6. Order that EZ Talk Communications shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine, this 21st day of April, 1999.

BY ORDER OF THE COMMISSION

Ray Robichaud
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
COMMISSIONERS ABSENT: Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.